

Contract No. SS7293-0/13

THIS AGREEMENT made and entered into as of this 1<sup>st</sup> day of January, 2009 by and between Lochard Corporation, a corporation organized and existing under the laws of the State of Delaware, having its principal office at 1050 Fulton Avenue, Suite 213, Sacramento, California 95825 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter

WITNESSETH:

WHEREAS, the Contractor has offered to provide preventive maintenance and support pursuant to the Scope of Services described in Appendix A and the terms of this Agreement with respect to the Airport Noise and Operations Management System (ANOMS) identified therein; and,

WHEREAS, the County desires to contract with the Contractor for Services stated herein, with respect to the provision of maintenance and support services for the designated equipment and its software, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a. The words "Additional Services" means the services described in Appendix B, Sections 1.2 and 2.2.
- b. The words "Contract" or "Contract Documents" or "Agreement" means collectively these terms and conditions, the Scope of Services (Appendix A) and all other attachments thereto and all amendments issued hereto.
- c. The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- d. The word "Contractor" to mean Lochard Corporation and its permitted successors and assignees.
- e. The words "Contract Date" means the date on which this Agreement is effective, which shall be the date set forth above.
- f. The words "Contract Manager" means Miami-Dade County's Department of Procurement Management Director, or the duly authorized representative, designated to manage the contract.
- g. The words "Change Order" or "Extra Work" or "Additional Work" means additions or deletions or modifications to the amount, type or value of the Scope of Services, as directed and/or approved by the County.
- h. The word "Days" mean Calendar Days.
- i. The word "Deliverables" mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- j. The words "Designated Equipment", "Hardware", "Equipment", "Maintenance Equipment", "Software" mean any computer and the associated physical equipment directly involved in the performance of data processing or communications functions specified in Appendix A, Sections 1.18 and 2.20; the equipment maintained pursuant to this Agreement, and the software products as specified in Appendix A, Sections 1.17, 1.18 and 2.19, 2.20. Any additional software and/or hardware that is procured by the County either directly or from the Contractor pursuant to Appendix B, Sections 1.2 and 2.2, and covered by the provisions of this Agreement.
- k. The words "Designated Sites" means the County's premises and other locations where the designated Equipment is situated and operated as specified in Appendix A, Sections 1.19 and 2.21: The Designated Sites.
- l. The words "Directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal",

- "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- m. The word "EMU" means a Lochard Environment Monitoring Unit.
  - n. The words "Fault Diagnosis" means the service described in Appendix A, Sections 1.5 and 2.5.
  - o. The words "Fault Reporting" means the service described in Appendix A, Sections 1.8 and 2.10.
  - p. The words "Maintenance Fees" means the fees as specified in Appendix B.
  - q. The words "Module License Fee" means the additional fee payable for new features that may be added to the system at a later date.
  - r. The words "New Modules" means new components or functionality added to The System as described in Appendix A, Section 2.9.
  - s. The words "Preventative Maintenance" means the pre-agreed cycle of maintenance provided by the Contractor to the County to ensure the maintained equipment continues to meet Factory Specifications.
  - t. The words "Project Manager" means the Director, Miami-Dade Aviation Department or the duly authorized representative designated to manage the Contract.
  - u. The words "Sub-contractor" or "sub-consultant" means any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
  - v. The words "Support Request" means a request in writing by the County to the Contractor for work to be performed under Appendix B, Sections 1 and 2 of this Agreement, Preventive Maintenance.
  - w. The words "The System" means both The Software and the Designated Equipment as specified in Appendix A Sections 1.17, 1.18 and 2.19, 2.20, and any new additional hardware and/or software that is procured by the County either directly or from the contractor pursuant to Appendix B, Sections 1.2 and 2.2, and covered by the provisions of this Contract
  - x. The words "Telephone Hotline Support" means the service described in Appendix A, Sections 1.3 and 2.3.
  - y. The words "Third Party Software" means software supported by other vendors and which forms part of The System.
  - z. The word "Upgrades" mean error corrections and improvements to existing functions of The System, in accordance with Appendix A, Section 2.8.
  - aa. The words "Work", "Services" "Program", or "Project" means all matters and things required to be done by the Contractor in accordance with the provisions of this

**Agreement.**

- bb. The words "Work Order" means the document, which will be issued by the County when and if any Additional Services are requested and which advise the Contractor of the Additional Services required and specific compensation, all in accordance with Appendix B, Sections 1.2 and 2.2.

**ARTICLE 2. ORDER OF PRECEDENCE.**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), and 3) Price Schedule (Appendix B)

**ARTICLE 3. RULES OF INTERPRETATION.**

- 3.1 References to a specified Article, section or Appendix shall be construed as reference to that specified Article, or section or Appendix unless otherwise indicated.
- 3.2 Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- 3.3 The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- 3.4 The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect their meaning.

**ARTICLE 4. NATURE OF THE AGREEMENT.**

- 4.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- 4.2 The Contractor shall provide Products and Services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed under this Agreement.
- 4.3 Any implied warranty granted under the Uniform Commercial Code shall apply to all goods and materials purchased under this Contract.
- 4.4 It is agreed and understood that this Agreement does not constitute the exclusive right of the Contractor to receive all orders that may be generated by the County for the type of Services specified in this Agreement.

- 4.5 The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under the Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- 4.6 The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- 4.7 The Contractor shall protect all existing structures, utilities, services, roads, trees, shrubbery, etc. on County property against damage or interrupted services at all times while performing Services on County property under this Agreement. The Contractor shall repair or replace, to the satisfaction of the County, any property that is damaged by reason of the Contractor's presence on County property.
- 4.8 The Contractor acknowledges that the County will be responsible for making all policy decisions regarding the Scope of Services and agrees to (i) provide input on policy issues in the form of recommendations. -; (ii) implement any and all changes in providing Services as a result of a policy change implemented by the County; and (iii) act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **ARTICLE 5. CONTRACT TERM**

The Contract shall become effective the date specified on page 1 of this agreement and shall be for the duration of five (5) years. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners. Any specific work assignment, which commences prior to the termination date of this Agreement and which will extend beyond the termination date, including any previous contract extension(s), shall, unless terminated by mutual written agreement by both parties, continue until completion at the same prices and terms and conditions as set forth in this Agreement.

#### **ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case addressed as follows:

##### **(1) To the County**

- a) to the Project Manager:  
Miami-Dade County  
Aviation Department  
5600 NW 36 St, Suite 533  
Miami, FL 33166

Attention: Norman Hegedus  
Phone: 305-876-0464  
Fax: 305-869-3908

and,

b) to the Contract Manager:

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974

Attention: Director  
Phone: 305-375-5257  
Fax: 305-375-2316

**(2) To the Contractor**

Vice President  
Lochard Corporation  
1050 Fulton Ave., Suite 213  
Sacramento, CA 95825

Attention: Robert Brodecky  
  
Phone: 866-240-8307  
Fax: 916-365-7719  
E-Mail: [info@lochard.com](mailto:info@lochard.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries, as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The fees and expenses to be paid to the Contractor as compensation for all Work and Services, including all costs associated it such Work and Services, is specified in Appendix B.

The County will have no obligation to pay the Contractor any amount in excess of the Contract Sum, except for a change and/or modification to this Agreement, executed in writing by the County and the Contractor after approval by the Board.

All Services undertaken by the Contractor before County's approval of this Agreement and with respect to repairs, prior to the issuance of a Work Order, or in the case of emergency repairs,

an oral directive by the Project Manager confirmed subsequently in writing, shall be at the Contractor's risk and expense and shall not be reimbursed by the County.

With respect to travel costs and travel related expenses, the Contractor agrees to comply with Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County will not be liable for any such expenses that have not been approved in advance, in writing, by the County or that exceed such amounts prescribed in Section 112.061, Florida Statutes.

## **ARTICLE 8. PRICING**

Hourly labor rates for repairs and the cost for preventative maintenance that are set forth in Appendix B shall remain firm and fixed for the term of the contract as specified in Article 5.

The County will compensate the Contractor based upon the following:

- 8.1 Preventive Maintenance. The Contractor shall be compensated for preventative maintenance in accordance with Appendix B. Preventive Maintenance will be paid on a monthly basis for services performed the previous month.
- 8.2 Additional Services. For Services on an "as needed basis", as authorized by the County's Project Manager, not covered under the Preventive Maintenance the Contractor shall be paid on an hourly basis for the time expended in accordance with the Labor Rates set forth in Appendix B. The County will issue Supplemental Agreements to purchase any third party software and/or hardware and to add modules to the maintenance agreement. Repairs will be performed during regular working hours (8:00 a.m. to 4:30 p.m. Monday through Friday) unless directed by the County to be performed at a different time such as emergencies. The Contractor shall present a price breakdown of any additional services based on prices established in Appendix B to the County prior to beginning the additional services, unless otherwise advised by the County.
- 8.3 The Contractor shall not charge tax, as the County is exempt from all State, Excise, Federal and Local sales tax. Notwithstanding, any tax on materials and/or supplies which are purchased by the Contractor, in conjunction with this Contract shall be subject to the Florida State Sales Tax, in accordance with Section 212.08 of Florida Statutes, amended 1970, and all amendments thereto, shall be borne solely by the Contractor. When the Contractor does not manufacture the materials and/or supplies, taxes must be incorporated in the price(s), not as a separate item. When materials and/or supplies are manufactured by the Contractor and are not for resale, the County is exempt. The County may be subject to applicable taxes on goods purchased for the purpose of resale. Upon request, the County will provide a tax exemption certificate, if applicable.

## **ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County monthly for preventative maintenance and periodically for additional services, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the

policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

The Contractor shall submit invoices and associated back-up documentation in duplicate to the County as follows:

Miami-Dade County  
Public Works Department  
111 NW 1<sup>st</sup> Street, Suite 1510  
Miami, FL 33128-1974  
Attention: Accounts Receivable

The County may at any time designate a different address and/or contact person by giving written notice to the other party. The Contractor's invoices and back up documentation are subject to audit by the County.

#### **ARTICLE 10. INDEMNIFICATION AND INSURANCE.**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Provider or its employees, agents, servants, partners principals or subcontractors. Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provider expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. The contractor's total liability under this contract shall not exceed the annual amount payable for any given service contract year as listed in "Appendix B" for support of the ANOMS 8 System.

The vendor shall furnish to the Vendor Assistance Section, Department of Procurement Management, Bids and contracts Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128-1989, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Workmen's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.

- B. Public Liability Insurance in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

**\*Under no circumstances are these contractors permitted on the A.O.A. side without increasing automobile coverage to \$5,000,000.**

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

**NOTE: DADE COUNTY BID NUMBER AND TITLE OF BID MUST APPEAR ON EACH CERTIFICATE.**

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY  
111 NW 1<sup>ST</sup> STREET  
SUITE 2340  
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

Issuance of a purchase order is contingent upon the receipt of the insurance documents within fifteen (15) calendar days after Board of County Commission approval. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Invitation To Bid, the Bidder shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Bidder fails to submit the required insurance documents in the manner prescribed in this Invitation To Bid within twenty (20) calendar days after Board of Commission approval, the Bidder shall be in default of the contractual terms and conditions and shall not be awarded the contract. Under such circumstances, the Bidder may be prohibited from submitting future Proposal to the County in accordance with Section 1.6 of the General Terms and Conditions.

The Bidder shall be responsible for assuring that the insurance certificate required in conjunction with this Section remain in force for the duration of the contractual period; including any and all option years that may be granted to the Bidder in accordance with Section 2.5 of the Special Conditions. If insurance certificates are scheduled to expire during the contractual period, the Bidder shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County will suspend the contract until such time as the new or renewed certificates are received by the County in the manner prescribed in the Invitation To Bid; provided, however, that this suspended period does not exceed thirty (30) calendar days. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate this contract for cause and seek re-procurement damages from the Bidder in accordance with Section 1.0, paragraph 1.10B of the General Terms and Conditions.

#### **ARTICLE 11. MANNER OF PERFORMANCE**

- 11.1 The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County will be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- 11.2 The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- 11.3 The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- 11.4 The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- 11.5 The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- 11.6 The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

**ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

**ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all Work under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

**ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER**

- 14.1 The Contractor acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- 14.2 The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, the Project Manager will issue them in writing as soon thereafter as is practicable.
- 14.3 The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- 14.4 In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

- 14.5 The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

#### **ARTICLE 15. MUTUAL OBLIGATIONS**

- 15.1 This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- 15.2 Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- 15.3 In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

#### **ARTICLE 16. QUALITY ASSURANCE/ RECORD KEEPING**

- 16.1 The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement plus any extension thereof.

#### **ARTICLE 17. AUDITS**

- 17.1 The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its

subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

- 17.2 Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

#### **ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution

#### **ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County. Such consent shall not be unreasonably withheld.

#### **ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- 20.1 If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- 20.2 The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- 20.3 Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- 20.4 In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

- 20.5 The County will have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

**ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County will not be responsible for the accuracy of the assumptions presented; and the County will not be responsible for conclusions to be drawn there from; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

**ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

**ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

- 23.1 The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- 23.2 The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- 23.3 The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by thirty (30) days written notice to the Contractor and in such event:

- 23.4 The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
1. Stop work on the date specified in the notice (the "Effective Termination Date");
  2. Take such action as may be necessary for the protection and preservation of the County's materials and property;
  3. Cancel orders;
  4. Assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services; and
  5. Take no action that will increase the amounts payable by the County under this Agreement.
- 23.5 In the event that the County exercises its right to terminate this Agreement pursuant to this Article, the Contractor will be compensated as stated in payment Article 7, herein for the:
1. portion of the Services completed in accordance with the Agreement and approved Work Orders up to the Effective Termination Date; and
  2. Non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

**ARTICLE 24. EVENT OF DEFAULT**

- 24.1 An Event of Default shall mean the failure of the Contractor to meet one or more of its obligations set forth in this Agreement as well as any one of the following:
1. The Contractor has not delivered Deliverables on a timely basis.
  2. The Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
  3. The Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
  4. The Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver, either voluntarily or involuntarily;
  5. The Contractor has failed to obtain the approval of the County where required by this Agreement;
  6. The Contractor has failed to provide "adequate assurances" as required under subsection "24.2" below;

7. the Contractor has failed to comply with any warranties stated in this Agreement or included with any parts or materials; or
  8. The Contractor used fraud, misrepresentation or material misstatements to entice the County to enter into this Agreement or to meet its obligations pursuant to this Agreement.
- 24.2 When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
1. treat such failure as a repudiation of this Agreement;
  2. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- 24.3 In the event the County will terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data

#### **ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County will deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

#### **ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and,
- b) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

**ARTICLE 27. PATENT & COPYRIGHT INDEMNIFICATION.**

- 27.1 The Contractor warrants that all Deliverables furnished hereunder, excluding Licensed Software and related documentation, and including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patents, copyrights, service marks, trade secrets, or any other third party proprietary rights.
- 27.2 The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks trade secrets, or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like in the course of performance or completion of, or in any way connected with, the Services, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability (including the costs of any appellate proceedings).
- 27.3 In the event of and Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- 27.4 The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable which it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the work or be unlawful.
- 27.5 The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

**ARTICLE 28. INTELLECTUAL PROPERTY RIGHTS**

Subject to Article 27 hereof, the copyright and all other intellectual property rights in the System and the Equipment and any and all amendments thereto and modifications thereof issued by the Contractor shall remain vested absolutely in the Contractor.

The County will be the owner of all data produced by the System and shall reserve the sole right to restrict or disseminate such data to third parties in its sole discretion.

**ARTICLE 29. CONFIDENTIALITY**

- 29.1 All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services,

or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- 29.2 The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- 29.3 It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County will be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

### **ARTICLE 30. PROPRIETARY INFORMATION**

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

### **ARTICLE 31. PROPRIETARY RIGHTS**

- 31.1 The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- 31.2 All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- 31.3 Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- 31.4 Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no

effect.

## ARTICLE 32. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

### 32.1 Vendor Registration

The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**  
(Section 2-8.1 of the County Code)
2. **Miami-Dade County Employment Disclosure Affidavit**  
(Section 2-8.1(d)(2) of the County Code)
3. **Miami-Dade Employment Drug-free Workplace Certification**  
(Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade Disability and Nondiscrimination Affidavit**  
(Section 2-8.1.5 of the County Code)
5. **Miami-Dade County Debarment Disclosure Affidavit**  
(Section 10.38 of the County Code)
6. **Miami-Dade County Vendor Obligation to County Affidavit**  
(Section 2-8.1 of the County Code)
7. **Miami-Dade County Code of Business Ethics Affidavit**  
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit**  
(Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit**  
(Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**  
(Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices**  
(Ordinance 97-35)
12. **Subcontractor /Supplier Listing**  
(Section 2-8.8 of the County Code))
13. **Environmentally Acceptable Packaging**  
(Resolution R-738-92)
14. **W-9 and 8109 Forms**  
(as required by the Internal Revenue Service)
15. **FEIN Number or Social Security Number**  
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
  - Identification of individual account records
  - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
  - Tax reporting purposes
  - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
16. **Office of the Inspector General**  
(Section 2-1076 of the County Code)
17. **Small Business Enterprises**  
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
18. **Antitrust Laws**  
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

### 32.2 Conflict of Interest

- 1) Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

**ARTICLE 33. INSPECTOR GENERAL REVIEWS.**

- 33.1 Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the Consultant is aware that the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Consultant shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Consultant's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Consultant, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Consultant in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Consultant or any third party.
- 33.2 Miami-Dade County Inspector General Review. According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Consultant. The audit cost shall also be included in all change orders and all contract renewals and extensions.
- 33.3 Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change

orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Consultant, its officers, agents and employees, lobbyists, County staff and elected officials to insure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Consultant from the Inspector General or IPSIG retained by the Inspector General, the Consultant shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Consultant's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

#### **ARTICLE 34. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

1. Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
2. Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
3. Environmental Protection Agency (EPA), as applicable to this Contract.
4. Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
5. "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
6. Miami-Dade County Code Section 10-38 "Debarment".

7. Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
8. Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

### **ARTICLE 35. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

### **ARTICLE 36. CONFLICT OF INTEREST**

The Contractor represents that:

1. No officer, director, employee, agent, or other contractor of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
2. There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other contractor of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

- ii) is an employee, agent, advisor, or contractor to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- 3. Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- 4. The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- 5. In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

#### **ARTICLE 37. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof. The expiration of a Work Order may extend beyond the expiration date of the agreement and if so the provisions of this Agreement shall apply until the County has accepted the work performed under such Work Order.

#### **ARTICLE 38. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- 39.1 Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- 39.2 Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- 39.3 Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 39. BANKRUPTCY**

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 40. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

**ARTICLE 41. AIRFIELD OPERATIONS AREA (AOA) SECURITY**

- 41.1 Contractor acknowledges and accepts full responsibility for compliance with all applicable rules and regulations of the Federal Aviation Authority (FAA) and MDAD as set forth from time to time relating to Contractor's use of the Miami International Airport (Airport). Contractor fully understands and acknowledges that any security measures deemed necessary by the Contractor for the protection of jobsite, or equipment and property and access to the AOA through the jobsite shall be the sole responsibility of the Contractor and shall involve no additional cost to the Contractor. All such security measures by the Contractor shall be in accordance with FAR 107 and the Airport Security Plan.
- 41.2 In order to maintain high levels of security at Miami International Airport (MIA), MDAD authorized identification badges will be issued to all Contractor employees working in the Security Identification Display Area (SIDA) or any other secured area of the Airport. All such employees will be issued photo identification badges and will be subject to Federal Bureau of Investigation (FBI) fingerprint based background investigation. Unless otherwise specified in the Contract Documents, identification badges will not be required or issued by MDAD for work performed at the General Aviation Airports.
- 41.3 The Contractor shall be responsible for requesting MDAD to issue identification badges to all employees who Contractor requests be authorized access to the SIDA and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employ of the Contractor or upon final acceptance of the work or termination of this Contract. Contractor will be responsible for fees associated with lost and unaccounted badges as well as the fee for fingerprinting and ID issuance.
- 41.4 All employees of the Contractor and its Subcontractors who must work within MDAD secured areas at MIA shall be supplied with MDAD identification badges above, which must be worn at all times while within the secured area. Badges shall be worn on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular Contractor. The Safety Division of MDAD shall provide the identification badges to the Contractor. Each employee must complete the SIDA training program conducted by MDAD and comply with all other FAA or MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued. At the present time, MDAD Security and Safety ID Section regularly provides SIDA Training.

- 41.5 Ramp permits will be issued to the Contractor authorized vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department guard gates for the term of any Project. These permits will be issued only for those vehicles (including vehicles belonging to the sub-consultants) that must have access to the site during the performance of the work. These permits will be only issued to company owned vehicles or to company leased vehicles (lease from a commercial leasing company). AOA decals, passes or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch lettering) displayed on both sides of the vehicle.

All vehicles operating within the AOA must be provided with the Automobile Liability Insurance required above. Proof of such insurance shall be provided to MDAD Airside Operations Division upon request. Unless otherwise specified in the Contract Documents, Ramp Permits will not be required or issued by MDAD for work performed at the General Aviation Airports.

- 41.6 Before the Contractor shall permit any employee with picture ID to operate a motor vehicle on the AOA without MDAD escort, the Contractor shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violations of AOA driving rules or loss of Florida driver's license.

- 41.7 The Contractor agrees that its personnel, vehicles and other personal property are subject to being searched when attempting to enter, leave or while on AOA. It is further agreed that the MDAD has the right to prohibit an individual, agent or employee of the Contractor or Subcontractor from entering the AOA, based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage or other unlawful activities, including repeated failure to comply with MDAD or the FAA SIDA and AOA access control policies, rules and regulations. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his/her authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA shall be advised, in writing, of the reason for such denial.

The Contractor acknowledges and understands that these provisions are for the protection of all users of the AOA and are intended to reduce the incidence of thefts, cargo tampering, aircraft sabotage and other unlawful activities at the Airport and to maximize compliance with MDAD or FAA access control policies and procedures.

- 41.8 The Contractor understands and agrees that vehicles shall not be parked on the AOA in areas not designated or authorized by MDAD nor in any manner contrary to any posted regulatory signs, traffic control devices or pavement markings.
- 41.9 The Contractor understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by the Contractor in areas under the jurisdiction or control of such

agencies. Persons not approved or consented to by Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Contractor.

- 41.10 Notwithstanding the specific provisions of this Article, the Contractor shall have the right to add to, amend or delete any portion hereof in order to meet reasonable security requirement of MDAD or of the FAA.
- 41.11 The Contractor shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as MDAD or appropriate Federal agencies may from time to time require.
- 41.12 Contractor agrees that it will include in all agreements with its MIA Subcontractors an obligation by such parties to comply with all security requirements applicable to their operations at the Airport. Contractor agrees that in addition to all remedies, penalties and sanctions that may be imposed by MDAD or the FAA upon Contractor's Subcontractors and their individual employees for a violation of applicable security provisions, Contractor shall be responsible to the Contractor for all such violations and shall indemnify and hold the Contractor harmless for all costs, fines and penalties arising there from, such costs include reasonable attorneys' fees.
- 41.13 AOA Security at general Aviation Airports: the Contractor and its Subcontractors, and suppliers shall "sign in" and "sign out" at the airport's manager's office or his designated representative whenever the Contractor is performing work at a General Aviation Airport.

#### **ARTICLE 42. ACCIDENT PREVENTION AND REGULATIONS AT THE AVIATION DEPARTMENT.**

This section applies to work being performed at all County Airports.

All operations at the Dade County Aviation Department (DCAD) are under the direct control of Aviation Department personnel. Interference with aircraft and vehicular traffic must be kept to a minimum. Aircraft operating areas and roadways shall not be closed or opened by or for the Contractor unless express permission is given to the Contractor by the DCAD Operations. The Contractor shall plan the scheduling of its work in collaboration with DCAD Engineering in order to insure safety for and, minimum hindrance to, port operations.

All equipment shall be withdrawn from work areas at the end of the workday in order to eliminate immediate or potential hazard to traffic and facilities. Materials stored at the airport by the Contractor shall be serviced in a manner that minimizes any obstruction to ground traffic. All equipment and stored materials shall be marked by barriers with flashing lights at no additional cost to the County. The Contractor shall exercise careful control during all phases of the work to prevent damage to airport utilities; including, but not limited to, overhead lights and buried cables. Before connecting work in any given area, the Contractor, working in conjunction with the DCAD Engineering and DCAD Maintenance Staff, shall endeavor to locate any possible utility conflicts. Should the bidder damage any airport utility through negligence, it shall promptly repair the damage at its own expense. All storage on site shall be coordinated with DCAD Engineering and DCAD Operations Divisions.

#### **ARTICLE 43. SAFETY.**

The Contractor shall comply with the rules and regulations of the Florida Department of Commerce regarding Industrial Safety under Section 440.56 Safety Rules – Workman's Compensation Laws and with United States Code of Federal Regulations, Title 29, Part 1926 (OSHA), as applicable, and other national consensus standards of safety pertaining to particular trades.

**ARTICLE 44. LICENSE**

The Contractor hereby grants to the County a perpetual, irrevocable and royalty free non-exclusive right and license to use the Software, with concurrent use by the number of users as agreed between the County and the Contractor, for the operation, training, maintenance or repair of the Software.

The County will not, without the prior written consent of the Contractor, reproduce, decompile or disassemble the Software or any part of it or sublicense or divulge or disclose the same to any other person or act in any way inconsistent with the Contractor's rights of ownership in the Software.

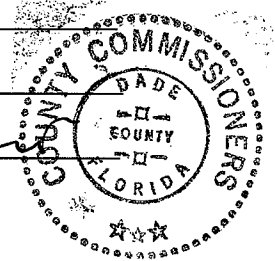
**ARTICLE 45. FORCE MAJEURE**

Except as otherwise expressly provided herein, neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable control of such party including, but not limited to, acts of natural disasters or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's Staff Personnel), or war. Notwithstanding the foregoing, the failures of any of the Contractor's suppliers, subcontractors, or the like shall not excuse the Contractor's performance except to the extent that such failures are due to any cause without the fault and reasonable control of such suppliers, subcontractors, or the like including, but not limited to, acts of God or the Public enemy, fires, explosion, riots, strikes (not including strikes of personnel of the Contractor's suppliers or subcontractors), or war.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

Contractor  
By: [Signature]  
Name: ROBERT BRODEUR  
Title: VICIR PRESIDENT  
Date: 10.21.2008  
Attest: [Signature]  
Secretary  
Office Manager

Miami-Dade County  
By: [Signature]  
Name: Ysela Hort  
Title: \_\_\_\_\_  
Date: 1/2/09  
Attest: [Signature]  
Clerk of the Board



Approved as to form  
and legal sufficiency

[Signature]  
Assistant County Attorney

**APPENDIX A****SCOPE OF SERVICES**

The Contractor shall provide preventative maintenance and repair services for the existing Airport Noise and Operations Management System (ANOMS) during and through the installation of the system upgrade as specified in Section 1 below. Once the upgrade installation is completed and accepted by the County's Project Manager, the Contractor shall provide preventative maintenance and repair services on the newly upgraded ANOMS 8 System as specified in Section 2 of this Appendix.

**1. SERVICES FOR EXISTING ANOMS SYSTEM**

The Contractor shall provide all personnel, equipment, tools, materials, supervision and other items necessary to perform the required Preventive Maintenance and all necessary repairs on a month-to-month basis until the completion and acceptance, by County Project Manager, of the Airport Noise and Operations Management System (ANOMS) upgrade to ANOMS 8.

The Contractor shall provide maintenance services for the Designated Equipment (hardware as listed in Section 1.18 below) and maintenance and support services for the Software (as defined in Section 1.17 below), and any new additional hardware and/or software that is procured by the County either directly or from the Contractor pursuant to Appendix B, Sections 1.2 and 2.2, and covered by the provisions of this contract in a fast and efficient manner with minimum disruption to the County's operations .

The maintenance services include:

Telephone Hotline Support within the hours designated in Section 1.3 below.

- Preventative Maintenance.
- Fault Diagnosis.
- Fault Rectification.
- Reporting software.

**1.1 Response Times**

Once the County has logged a Support Request with Contractor, the Contractor shall respond, through VPN connection or phone call, according to the nature of the problem and its impact on the County's operations, during the Working Hours:

<b>Category</b>	<b>Fault Description</b>	<b>Response Time (within the Working Hours)</b>
1	Loss of radar data, flight plan data, or all noise data collection; ANOMS Software not operating.	8 Working Hours from receipt of Support Request or detection by the Contractor
2	Major system function non-operational	8 working hours from receipt of Support Request or detection by the Contractor
3	Minor system function non-operational; Loss of noise data collection from one or more Noise Monitoring Terminal (NMT)	16 Working Hrs from receipt of Support Request or detection by the

Category	Fault Description	Response Time (within the Working Hours)
		Contractor
4	Miscellaneous software bug	Next applicable release
5	Query or request for information	16 Working Hrs from receipt of Support Request or detection by the Contractor
<b>Note:</b> Response Times are in Working Hours and will be determined from the time that Lochard receives notification of the incident. A minimum of 85% of incidents raised will be resolved within the Resolution time.		

### 1.2 County Obligations

- 1.2.1 The County will perform initial faultfinding and diagnosis of all hardware and software problems before contacting the Contractor.
- 1.2.2 All Support Requests will be submitted to the Contractor in writing in the prescribed form as set out in Appendix C, by electronic mail ("email"), facsimile, or post.
- 1.2.3 The County will provide and maintain a dedicated telephone line for remote modem access to the System by the Contractor.
- 1.2.4 The County is responsible for maintaining power to the source for the System and will notify the Contractor - 7 days in advance of any planned outage and within 4 working hours of an unplanned outage.
- 1.2.5 The County will provide all necessary user IDs and passwords (including the root password) to the Contractor before the Contractor performs Services under this Agreement. The Contractor is not responsible for any delay caused by the County failing to provide a user ID or password to the Contractor.

### 1.3 Telephone/email Hotline Support

- 1.3.1 The Contractor shall provide support in the form of advice by telephone (or email) in response to a telephone call (or email) from the County in relation to the operation of the System.
- 1.3.2 The Contractor's telephone/email support service shall operate during the Working Hours as defined in Sections 1.20 and 2.22 below.

### 1.4 Preventative Maintenance

- 1.4.1 The Contractor shall, on a quarterly basis with-in the duration of the upgrade, provide routine system checking and housekeeping to ensure the operating integrity of the System, including:
  - ANOMS Data Processing
  - ANOMS Data Integrity
  - Interbase Database Performance
  - UNIX System Administration
  - Report Production

### 1.5 Fault Diagnosis

- 1.5.1 The County will undertake initial fault diagnosis work within a reasonable time if requested to do so by the Contractor.
- 1.5.2 The County will, if requested, supply a listing of output and any other data that the Contractor requires in order to diagnose or reproduce operating conditions similar to those present when a Support Request is made.
- 1.5.3 The Contractor shall assist the County in diagnosing all fault conditions including those associated with equipment other than the Designated Equipment.

**1.6 Fault Rectification**

- 1.6.1 The Contractor shall carry out such remedial work as it determines is necessary to return the System to operating in accordance with specifications.
- 1.6.2 The Contractor shall carry out remedial work either remotely or on site at its discretion.
- 1.6.3 The Contractor will not be liable to perform such fault rectification if:
  - i) It has not received a Support Request from the County in the prescribed form;
  - ii) The County has changed the configuration on PCs and User IDs which has caused, or contributed to the cause of, the fault;
  - iii) The fault is in connection with any equipment that does not meet specifications, and the Contractor has informed the County at least 90 days prior to the fault report of any fault being attributed to any such equipment.

**1.7 Computer, and Other Third Party Sub-System Maintenance**

- 1.7.1 The Contractor shall provide hardware and software for radar and flight plan data, and shall provide service and repair of all such hardware and software as required by the County.
- 1.7.2 The Contractor shall maintain and repair System hardware and software, as stipulated in Sections 1.17, 1.18 and 2.19, 2.20, below. The Contractor will maintain and repair the system either on-site or electronically as agreed upon by both parties.

**1.8 Fault Reporting**

- 1.8.1 All Support Requests will be submitted to the Contractor and will include the results of the first level fault finding work carried out by the County.
- 1.8.2 The County will, if requested, supply a documented example of the defect or error, which it alleges, prevents substantial conformity of the System with the Specifications.
- 1.8.3 The County will, if requested, supply a listing of output and any other data, which the Contractor requires in order to diagnose or reproduce operating conditions similar to those present when any defect or error in the System was discovered.

**1.9 Maintenance Records**

- 1.9.1 The County will keep accurate records relating to the use and performance of the System as may be directed by the Contractor from time to time.
- 1.9.2 The County permits the Contractor to inspect these records at any time during the County's normal business hours. The County will provide the Contractor with a copy of all or any part of these records if so requested.

**1.10 Other Services**

- 1.10.1 Should the County require the Contractor to perform any other services not covered by this Agreement, and the Contractor agrees to provide those services, then:
  - i. All such Other Services are to be authorized in advance by the County's Project Manager;
- 1.10.2 The Contractor shall perform no other services, without the County's prior written approval. The County will develop new scope of services for other services on an as needed basis in the form of a Work Order or Supplemental Agreement.

**1.11 Additional Designated Sites**

- 1.11.1 Should the County decide to use the System for or at an additional site or location not specified under this Agreement as a Designated Site, the Contractor shall extend this Agreement to cover the use of the System on the new Site after payment of a negotiated additional maintenance fee through a Work Order or Supplemental Agreement.

- 1.11.2 All such additional designated sites are to be authorized in advance by the County. An additional software license fee may need to be paid.

**1.12 Access**

- 1.12.1 The County will make all reasonable efforts to provide that the Contractor's maintenance personnel have full and safe access to the System at all reasonable times for the purpose of providing the Services.
- 1.12.2 The County will make all reasonable efforts to provide that the Contractor's maintenance personnel are provided with all information, facilities, services and accessories reasonably required by the Contractor to meet its obligations under this Agreement.
- 1.12.3 The County will provide upon request a suitably qualified or informed representative to accompany the Contractor's maintenance personnel and to advise the Contractor on access or any other matter within the County's knowledge or control that will assist the Contractor in meeting its obligations under this Agreement.
- 1.12.4 Access includes spare parts storage areas, such areas adjacent to the Designated Equipment as are reasonably required by the Contractor to carry out the Services, and suitable vehicle parking areas.
- 1.12.5 Access shall include unhampered working facilities, adequate light, heating, cooling, ventilation, suitable electrical outlets and computer network connections to enable the Contractor to meet its obligations under this Agreement.

**1.13 Confidentiality**

- 1.13.1 The Contractor shall treat all of the County's data as confidential and will only use that data for the purpose of diagnosis and rectification of problems under the scope of this Agreement.
- 1.13.2 The Contractor shall not transfer or disclose any of the County's data to any other party without the prior written consent of the County.

**1.14 Reports**

Contractor shall submit written reports to the County's Project Manager for approval describing any recommended repairs, parts, and labor necessary to return units to original working condition.

**1.15 Clean-up**

The Contractor shall leave the work area clean and in the same condition that it was in prior to the commencement of repairs or Services.

**1.16 Site Visits**

A Lochard Customer support representative shall provide software support services at no additional expense to the County, at the County's Premises, four (4) times per year. Such visits shall address topics included on an agenda mutually agreed upon and predetermined by the County and the Contractor. The site visits shall be for a maximum two (2) days of eight (8) hours per day.

**1.17 Software**

Item	Author	User Count
ANOMS Release 6.5	Lochard	3
Ghostview 4.0	FSF	3
Interbase Relational Database 5.0	Imprise	3
Solaris 2.6 Server 5/98	SUN Microsystems	1
Solaris 2.6 Workstation 5/98	SUN Microsystems	2
Framemaker 5.5.6	Adobe	3
Samba 2.0	Samba Consortium	1
Yearly Map Update	GDT	1
OAG Monthly Database Updates	OAG	1
FAA Registry Quarterly Update	FAA	1

**1.18 Designated Equipment****a. Servers**

Item	Manufacturer	Model	Location
1	Ultra 60	U60937H3E08	Server Room

**b. Work Stations**

Item	Manufacturer	Model	Location
1	Sparcstation 5	S5738C1769	Noise Office
2	Sparcstation 5	S5735c0437	Noise Office

**c. Flight Track and Flight Plan Data System**

Item	Manufacturer	Model
1	Megadata	Passur
2	Dimensions	ACES IIIA

**d. COMMS Modems**

Item	Manufacturer	Model	Quantity
ANOMS Modems	US Robotics	Courier	5

**1.19 Designated Site**

Site	Address
Miami Dade County Aviation Department	5600 NW 36 <sup>th</sup> St., Suite 533, Miami, FI 33122

**1.20 Lochard North American Support**

Lochard's North American Headquarters are located in Sacramento, California. Support from this office shall be provided to MDAD:

- Weekdays - 08:30-17:30 Eastern Time
- Lochard North American offices are closed on Weekends and US public holidays.

Lochard also operates a helpdesk from its Operations Center (LOC) in Melbourne, Australia

- Support staff from the LOC are available 24 hours/day on weekdays

## 2. SERVICES FOR UPGRADED ANOMS 8 SYSTEM

The Contractor shall provide all personnel, equipment, tools, materials, supervision and other items necessary to perform Preventive Maintenance and all necessary repairs of the Airport Noise and Operations Management System 8 as required by the Agreement.

The Contractor shall provide maintenance services for the Designated Equipment (hardware as listed in Section 2.20 below) and maintenance and support services for the Software (as defined in Section 2.19 below), and any new additional hardware and/or software that is procured by the County either directly or from the Contractor pursuant to Appendix B, Section 2.2, and covered by the provisions of this contract in a fast and efficient manner with minimum disruption to the County's operations .

The maintenance services include:

Telephone Hotline Support within the hours designated in Section 2.22 below.

- Preventative Maintenance.
- Fault Diagnosis.
- Fault Rectification.
- Upgrades.
- New Modules
- Reporting software.

### 2.1 Response Times

Once the County has logged a Support Request, the Contractor shall respond, through email or phone call, according to the nature of the problem and its impact on the County's operations, during the Working Hours:

Category	Fault Description	Response Time (within the Working Hours)
1	Loss of radar data, flight plan data, or all noise data collection; ANOMS Software not operating.	8 Working Hours from receipt of Support Request or detection by the Contractor
2	Major system function non-operational	8 working hours from receipt of Support Request or detection by the Contractor
3	Minor system function non-operational; Loss of noise data collection from one or more NMTs	16 Working Hrs from receipt of Support Request or detection by the Contractor
4	Miscellaneous software bug	Next applicable release
5	Query or request for information	16 Working Hrs from receipt of Support Request or detection by the Contractor
<b>Note:</b> Response Times are in Working Hours and will be determined from the time that Lochard receives notification of the incident. A minimum of 85% of incidents raised will be resolved within the Resolution time.		

**2.2 County Obligations**

- 2.2.1 The County will perform initial faultfinding and diagnosis of all hardware and software problems before contacting the Contractor.
- 2.2.2 All Support Requests will be submitted to the Contractor in writing in the prescribed form as set out in Appendix C, by electronic mail ("email"), facsimile, or post.
- 2.2.3 The County will provide and maintain a dedicated VPN connection for remote access to the System by the Contractor.
- 2.2.4 The County is responsible for maintaining power to the source for the System and will notify the Contractor - 7 days in advance of any planned outage and within 4 working hours of an unplanned outage.
- 2.2.5 The County shall be responsible for maintaining its own disk space quotas for the System; however, Lochard shall advise The County when the system requires an increase in available disk space.
- 2.2.6 The County will provide all necessary user IDs and passwords (including the root password) to the Contractor before the Contractor performs Services under this Agreement. The Contractor is not responsible for any delay caused by the County failing to provide a user ID or password to the Contractor

**2.3 Telephone/email Hotline Support**

- 2.3.1 The Contractor shall provide support in the form of advice by telephone (or email) in response to a telephone call (or email) from the County in relation to the operation of the System.
- 2.3.2 The Contractor's telephone/email support service shall operate during the Working Hours as defined in Section 2.22 below.

**2.4 Preventative Maintenance**

- 2.4.1 The Contractor will, from time to time, provide routine system checking and housekeeping to ensure the operating integrity of the System, including:
  - ANOMS Data Processing
  - ANOMS Data Integrity
  - Report Production

**2.5 Fault Diagnosis**

- 2.5.1 The County will undertake initial fault diagnosis work within a reasonable time if requested to do so by the Contractor.
- 2.5.2 The County will, if requested, supply a listing of output and any other data that the Contractor requires in order to diagnose or reproduce operating conditions similar to those present when a Support Request is made.
- 2.5.3 The Contractor shall assist the County in diagnosing all fault conditions including those associated with equipment other than the Designated Equipment.

**2.6 Fault Rectification**

- 2.6.1 The Contractor shall carry out such remedial work as it determines is necessary to return the System to operating in accordance with specifications.
- 2.6.2 The Contractor shall carry out remedial work either remotely or on site at its discretion.
- 2.6.3 The Contractor will not be liable to perform such fault rectification if:
  - i) It has not received a Support Request from the County in the prescribed form;
  - ii) The County has changed the configuration on PCs and User IDs which has caused, or contributed to the cause of, the fault;
  - iii) The fault is in connection with any equipment that does not meet specifications, and the Contractor has informed the County at least 90 days prior to the fault report of any fault being attributed to any such equipment.

**2.7 Computer, and Other Third Party Sub-System Maintenance**

- 2.7.1 The Contractor shall provide hardware and software for radar and flight plan data, and shall provide service and repair of all such hardware and software as required by the County.
- 2.7.2 The Contractor shall maintain and repair System hardware and software, as stipulated in Sections 2.19, and 2.20 below. The Contractor will maintain and repair the system either on-site or electronically as agreed upon by both parties.

**2.8 Upgrades**

- 2.8.1 The Contractor shall notify the County of Upgrades to the current version of the System when they are made available for general distribution. The County may choose to install the Upgrades.
- 2.8.2 The County will be entitled to one Upgrade per year including the following components of the System:
  - i) Application Software
  - ii) Third Party Software
- 2.8.3 Upgrades to the System may require a suitably qualified Contractor engineer traveling to the County site, installing software and/or hardware acquired by the Contractor with the County's approval, performing any necessary data conversion, testing, and training users in the features and use of the upgraded software at rates specified in Appendix B, Section 2.2 -Additional Services.
- 2.8.4 The County will pay the Contractor for the engineer's time and all other associated Additional Associated costs according to the rates in Appendix B for Additional Services, unless performed during a scheduled site visit.
- 2.8.5 The County will pay the Contractor for the engineer's time and all other associated costs of upgrades to third parties' software used in the System according to the rates in Appendix B, unless performed during a scheduled site visit.
- 2.8.6 There shall be no separate software license fee payable by County for Upgrades.
- 2.8.7 The annual maintenance payment under this Agreement shall not be increased as a result of an Upgrade to the System.

**2.9 New Modules**

- 2.9.1 The Contractor shall notify the County of New Modules applicable to the System when they are made available for general distribution.
- 2.9.2 The County will be entitled to any New Modules upon payment of the then current New Module license fees, as stipulated on Appendix B, Section 2.2.
- 2.9.3 Installation of the New Modules may require a site visit by the Contractor or may be done remotely, depending upon the requirements of the System and with prior written approval of the County.
- 2.9.4 The County will pay the Contractor for the engineer's time and all other associated costs according to the rates in Appendix B, Section 2.2 – Additional Services, if work cannot be accomplished during a scheduled site visit.

- 2.9.5 The County acknowledges that an upgrade of third party software or new version, during the maintenance period, may require new hardware, which is outside the control of the Contractor (i.e. the third party may not continue to support present hardware requirements). The County reserves the right to purchase same or equivalent hardware and software from other vendors, as it is to the best interest of the County. Should the County purchase required software and hardware from the Contractor pursuant to the terms of Appendix B, Section 2.2, the County agrees to pay for the additional cost of new hardware to support new versions of third party software if the Contractor and the County consider it necessary.

**2.10 Fault Reporting**

- 2.10.1 All Support Requests will be submitted to the Contractor and will include the results of the first level fault finding work carried out by the County.
- 2.10.2 The County will, if requested, supply a documented example of the defect or error, which it alleges, prevents substantial conformity of the System with the Specifications.
- 2.10.3 The County will, if requested, supply a listing of output and any other data, which the Contractor requires in order to diagnose or reproduce operating conditions similar to those present when any defect or error in the System was discovered.

**2.11 Maintenance Records**

- 2.11.1 The County will keep accurate records relating to the use and performance of the System as may be directed by the Contractor from time to time.
- 2.11.2 The County permits the Contractor to inspect these records at any time during the County's normal business hours. The County will provide the Contractor with a copy of all or any part of these records if so requested.

**2.12 Additional Services**

- 2.12.1 Should the County require the Contractor to perform any additional services not covered by this Agreement, and the Contractor agrees to provide those services, then:
- i. All such Additional Services are to be authorized in advance by the County's Project Manager;
  - ii. All time shall be billed at the hourly rate specified Appendix B, Section 2.2,
- 2.12.2 The Contractor shall perform no additional services, without the County's prior written approval. The County will develop new scope of services for other services on an as needed basis in the form of a Supplemental Agreement.

**2.13 Additional Designated Sites**

- 2.13.1 Should the County decide to use the System for or at an additional site or location not specified under this Agreement as a Designated Site, the Contractor shall extend this Agreement to cover the use of the System on the new Site after payment of a negotiated additional maintenance fee through a Supplemental Agreement.
- 2.13.2 All such additional designated sites are to be authorized in advance by the County. An additional software license fee may need to be paid.

**2.14 Access**

- 2.14.1 The County will make all reasonable efforts to provide that the Contractor's maintenance personnel have full and safe access to the System at all reasonable times for the purpose of providing the Services.
- 2.14.2 The County will make all reasonable efforts to provide that the Contractor's maintenance personnel are provided with all information, facilities, services and accessories reasonably required by the Contractor to meet its obligations under this Agreement.
- 2.14.3 The County will provide upon request a suitably qualified or informed representative to accompany the Contractor's maintenance personnel and to advise the Contractor on access or any other matter within the County's knowledge or control that will assist the Contractor in meeting its obligations under this Agreement.
- 2.14.4 Access includes spare parts storage areas, such areas adjacent to the Designated Equipment as are reasonably required by the Contractor to carry out the Services, and suitable vehicle parking areas.
- 2.14.5 Access shall include unhampered working facilities, adequate light, heating, cooling, ventilation, suitable electrical outlets and computer network connections to enable the Contractor to meet its obligations under this Agreement.

**2.15 Confidentiality**

- 2.15.1 The Contractor shall treat all of the County's data as confidential and will only use that data for the purpose of diagnosis and rectification of problems under the scope of this Agreement.
- 2.15.2 The Contractor shall not transfer or disclose any of the County's data to any other party without the prior written consent of the County.

**2.16 Reports**

Contractor shall submit written reports to the County's Project Manager for approval describing any recommended repairs, parts, and labor necessary to return units to original working condition.

**2.17 Clean-up**

The Contractor shall leave the work area clean and in the same condition that it was in prior to the commencement of repairs or Services.

**2.18 Site Visits**

A Lochard Customer support representative shall provide software support services at no additional expense to the County, at the County's Premises, four (4) times per year. Such visits shall address topics included on an agenda mutually agreed upon and predetermined by the County and the Contractor. The site visits shall be for a maximum two (2) days of eight (8) hours per day.

**2.19 Software**

Item	Author	User Count
ANOMS 8 Server	Lochard	1
ANOMS 8 ROVER	Lochard	1
ANOMS 8 User Licenses	Lochard	4
Oracle 9i	Oracle	1
Windows XP Professional	Microsoft	2
Office 2003 Professional	Microsoft	2
Windows Server 2003 (ANOMS server and ROVER)	Microsoft	2
Crystal Reports 11	Business Objects	4
Raster Images	Digital Glove	1
Yearly Map Update (Streets/Tiger Database)	TeleAtlas	1
OAG Monthly Database Updates	OAG	1
FAA Registry Quarterly Update	FAA	1

**2.20 Designated Equipment****a. Servers**

Item	Manufacturer	Model	Location
1	HP ANOMS 8 SERVER	DL-380-G5	Server Room
2	HP ANOMS 8 ROVER	DL-320-G5	Server Room

**b. Work Stations**

Item	Manufacturer	Model	Location
1	HP/Dell Equivalent	Desktop	Noise Office
2	HP/Dell Equivalent	Desktop	Noise Office
3	HP/Dell Equivalent	Laptop	Noise Office

**c. Flight Track and Flight Plan Data System**

Item	Manufacturer	Model	Location
1	Megadata	Passur	Building 845

**d. COMMS Modems**

Item	Manufacturer	Model	Quantity
ANOMS Modems	US Robotics	Courier	8
Etherlite Device	Digi International	8 or 16 Port	1

**2.21 Designated Site**

Site	Address
Miami Dade County Aviation Department	5600 NW 36 <sup>th</sup> St., Suite 533, Miami, FI 33122

**2.22 Lochard North American Support**

Lochard's North American Headquarters are located in Sacramento, California. Support from this office shall be provided to MDAD:

- Weekdays - 08:30-17:30 Eastern Time
- Lochard North American offices are closed on Weekends and US public holidays.

Lochard also operates a helpdesk from its Operations Center (LOC) in Melbourne, Australia

- Support staff from the LOC are available 24 hours/day on weekdays

## APPENDIX B

## PRICE SCHEDULE

**1. PRICING FOR EXISTING ANOMS SYSTEM****1.1 Yearly Maintenance Fee Line-Item Break-down:**

Upon completion and acceptance of the upgraded system the County's Project Manager, the Contractor will be paid in accordance with fee specified in Section 2 of Appendix B. During the upgrade process, the Contractor will be paid a monthly fee as specified below:

**a. Third Party Direct Cost (no mark-up):**

Megadata Passive Radar Maintenance	\$23,400.00
Dimensions International ACES Maintenance	\$21,840.00
Akibia Computer Maintenance	\$ 4,888.00
<b>Total Third Party Cost</b>	<b><u>\$50,128.00</u></b>

**b. Lochard Items**

Technical Support	\$70,191.00
Site Visits	\$12,314.00
<b>Total Lochard</b>	<b><u>\$82,505.00</u></b>

Total Annual ANOMS Support Price \$132,633.00

**Total Monthly** **\$11,053.00**

**1.2 Additional Services**

The County's Project Manager may request additional services as listed below. These additional services shall be billed to the County as follows:

**On-as-Needed Services**

Item	Rate
Software Engineer, Customer Support, Consulting, Training, Programming, and other labor.	\$155.00 per hour. Not subject to CPI
Travel, accommodation, meals, disbursements and other expenses.	Subject to Section 112.061, Florida Statutes

**Purchase & Additions of Modules to Agreement**

Third Party Software and Hardware	Cost plus 15% handling.
Lochard's New Modules added to The System:	Increase to Annual Maintenance Fee:
Hardware	12% of Hardware Price
Software	12% of Module License Fee
	Not Subject to CPI

**2. PRICING FOR UPGRADED ANOMS 8 SYSTEM****2.1. Preventive Maintenance**

Item	Annual Amount
Year One Preventive Maintenance	\$120,832.00
Year Two Preventive Maintenance	\$125,663.30*
Year Three Preventive Maintenance	\$130,690.00*
Year Four Preventive Maintenance	\$135,918.00*
Year Five Preventive Maintenance	\$141,355.00*

- Amounts reflect a CPI increase.

**Yearly Preventive Maintenance Fee Line-Item Break-down:****a. Third Party Direct Cost (no mark-up):**

Megadata Passive Radar Maintenance	\$23,400.00
Akibia Computer Maintenance	\$ 1,760.00
<b>Total Third Party Cost</b>	<b><u>\$25,160.00</u></b>

**b. Lochard Items**

SRG FAA STARS Interface	\$13,167.00
Technical Support	\$70,191.00
Five Site Visits	\$12,314.00
<b>Total Lochard</b>	<b><u>\$95,672.00</u></b>

Total Annual ANOMS 8 Support Price \$120,832.00

\* 4% CPI will be applied to years two through five.

<b>Total Monthly (year one)</b>	<b>\$10,069.00</b>
<b>Total Monthly (year two)</b>	<b>\$10,472.00</b>
<b>Total Monthly (year three)</b>	<b>\$10,891.00</b>
<b>Total Monthly (year four)</b>	<b>\$11,327.00</b>
<b>Total Monthly (year five)</b>	<b>\$11,780.00</b>

**2.2 Additional Services**

The County's Project Manager may request additional services as listed below. These additional services shall be billed to the County as follows:

**On-as-Needed Services**

Item	Rate
Software Engineer, Customer Support, Consulting, Training, Programming, and other labor.	\$155.00 per hour. Not subject to CPI
Travel, accommodation, meals, disbursements and other expenses.	Subject to Section 112.061, Florida Statutes

**Purchase & Additions of Modules to Agreement**

Third Party Software and Hardware	Cost plus 15% handling. Not Subject to CPI
Lochard's New Modules added to The System:	Increase to Annual Maintenance Fee:
Hardware	12% of Hardware Price
Software	12% of Module License Fee

### APPENDIX C SUPPORT REQUEST FORM

Lochard requires all Support Requests to be in writing and will accept either fax or email as per the following format:

#### EMAIL

Customers should submit their request to: [cms@lochard.com](mailto:cms@lochard.com)

- The subject section of the email will be used as the Title of the request
- The body of the email will be entered in the ticket as the description of the request.
- Any attachments such as screen captures or error messages will also be attached to the ticket.
- Once the ticket is lodged in the system a reply will be sent acknowledging the Support Request and identifying the unique ticket number that is to be used in all future communication concerning this request.

#### FAX

All Support Requests should be Faxed to Lochard using the following format:

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### CUSTOMER SUPPORT REQUEST.

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LOCHARD CORPORATION  
1050 FULTON AVE, SUITE 213  
SACRAMENTO, CA 95825

FAX: 916-265-7719  
PHONE: 916-265-7700

Customer Ref:

Contact Details:

Site:

*Customer Name*

Date/Time:

Category:

1= Urgent – Data Loss, 2= Major Loss of Function, 3= Loss of Function,  
4= Minor Defect, 5=Request for Assistance

Brief Description:

*Include component effected and attach any error messages or screenshots*